

June 25, 2009

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: King County Department of Transportation file no. **V-2620**
Proposed ordinance no. **2009-0214**
Adjacent parcel no. **012005-9042**

MUCKLESHOOT INDIAN TRIBE
Road Vacation Petition

Location: Portion of SE 400th Street

Petitioner: **Muckleshoot Indian Tribe**
Attn: Charlotte Williams
39015—172nd Avenue SE
Auburn, Washington 98092
Telephone: (253) 876-3329

King County: Department of Transportation, Road Services Division
represented by Nicole Keller
201 S. Jackson Street
Seattle, Washington 98104
Telephone: (206) 296-3731
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SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Approve road vacation and waive compensation
Department's Final:	Approve road vacation and waive compensation
Examiner's:	Approve road vacation and waive compensation

DEPARTMENT'S REPORT:

The Department of Transportation's written report to the Hearing Examiner for Item No. V-2620 was received by the Examiner on May 20, 2009.

PUBLIC HEARING:

After reviewing the Department's Report and examining available information on file with the petition, the Examiner conducted a public hearing on the subject right-of-way as follows:

The hearing on item no. V-2620 was opened by the Examiner on May 20, 2009, in the Hearing Examiner's Conference Room, 400 Yesler Way, Seattle, Washington 98104. The hearing was then continued administratively for receipt of the affidavit of publication, which was received May 27, 2009, at which time the hearing record closed. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Road name and location:	Portion of SE 400th Street
Right of way classification:	C-Class
Area:	42,552 square feet
Calculated compensation amount:	\$9,148.68
2. Notice of hearing on the Department's report was given as required by law, and a hearing on the report was conducted by the Examiner on behalf of the Metropolitan King County Council.
3. Except as provided herein, the Examiner adopts and incorporates herein by this reference the facts set forth in the Department's report to the Examiner for the May 20, 2009, public hearing and the statement of facts contained in Proposed Ordinance No. 2009-0214. The Department's report will be attached to those copies of this report and recommendation that are submitted to the County Council.
4. Maps showing the vicinity of the proposed vacation and the specific area to be vacated are in the hearing record as exhibit nos. 6 and 8.
5. The abutting (receiving) property is owned by Petitioner Muckleshoot Indian Tribe and lies within the Tribal Reserve.
6. The subject right-of-way segment is not currently opened, constructed or maintained for public use, and is not known to be used informally for access to any property.
7. Vacation of the right-of-way would have no adverse effect on the provision of access and fire and emergency services to the abutting properties and surrounding area.
8. The right-of-way is not necessary for the present or future public road system for travel or utilities purposes.
9. No easements are necessary to be retained for the construction, repair and maintenance of public utilities and services.

10. The compensation normally required by law to be paid as a condition precedent to vacation of this road, \$9,148.68, has been deposited with the County. However, KCC 14.40.020.D allows a compensation waiver for public agencies, at the Council's discretion.¹ KCDOT Road Services recommends that the compensation be waived in this case given the Petitioner's status, and the monies refunded to the Petitioner.

CONCLUSION:

1. The right-of-way segment subject to this petition is not useful as part of the King County road system, and the public will be benefited by its vacation.
2. As the thrust of the governmental agency compensation waiver provided by KCC 14.40.020.D seems to recognize a public benefit from waiving compensation in the spirit of intergovernmental cooperation, and nothing in the record suggests that the waiver should not be granted in this case, the Examiner seconds KCDOT's recommendation of waiver.

RECOMMENDATION:

APPROVE proposed Ordinance No. 2009-0214 to vacate the subject road right-of-way and waive compensation pursuant to KCC 14.40.020.D.

RECOMMENDED June 25, 2009.

Peter T. Donahue
King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) *on or before* **July 9, 2009**. If a notice of appeal is filed, the original and six copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before* **July 16, 2009**.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

¹ "When a road is vacated for a governmental agency, compensation shall be in accordance with the classification of the road, except that some or all of the compensation may be waived at the discretion of the council." [KCC 14.40.020.D]

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council on a recommendation of the Examiner shall be final and conclusive unless within 21 days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

MINUTES OF THE MAY 20, 2009, PUBLIC HEARING ON DEPARTMENT OF TRANSPORTATION, ROAD SERVICES DIVISION FILE NO. V-2620

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing was Nicole Keller representing the Department.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Report to the Hearing Examiner for the May 20, 2009 hearing, with 16 attachments
- Exhibit No. 2 Petition transmittal letter to King County Department of Transportation (KCDOT), from Clerk of the Council, dated April 14, 2008
- Exhibit No. 3 Petition for Vacation of a County Road including legal descriptions of petitioners' properties, submitted April 14, 2008
- Exhibit No. 4 Copy of filing fee, check no. 207246 in the amount of \$100, submitted April 14, 2008
- Exhibit No. 5 Receipt no. 00882 for filing fee
- Exhibit No. 6 Vicinity map
- Exhibit No. 7 Quit-Claim Deed of property to King County, recorded October 19, 1931
- Exhibit No. 8 Map depicting vacation area
- Exhibit No. 9 Letter of explanation from KCDOT to Petitioners, dated May 28, 2008
- Exhibit No. 10 Recommendation and request for compensation letter from KCDOT to Petitioners, dated October 15, 2008
- Exhibit No. 11 Compensation Worksheet
- Exhibit No. 12 Follow-up request for compensation, dated December 11, 2008
- Exhibit No. 13 Copy of compensation payment, check no. 221910 in the amount of \$9,148.68, submitted January 5, 2009
- Exhibit No. 14 Receipt no. 540809 for compensation payment
- Exhibit No. 15 Petitioner's request for waiver of compensation, dated December 29, 2008
- Exhibit No. 16 Recommendation letter from KCDOT to KC Council, dated October 17, 2008
- Exhibit No. 17 Proposed Ordinance transmittal letter from KCDOT to KC Council, dated March 13, 2009
- Exhibit No. 18 Proposed Ordinance 2009-0214
- Exhibit No. 19 Fiscal Note
- Exhibit No. 20 Affidavit of Posting on April 15, 2009
- Exhibit No. 21 Affidavit of Publication on May 6 and 13, 2009

PTD:vsm

V-2620 RPT